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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re N.G., a Person Coming Under the Juvenile Court Law.	
SAN DIEGO COUNTY HEALTH AND HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. F.G., Defendant and Appellant.	D049963 (Super. Ct. No. J513481C)

APPEAL from a judgment of the Superior Court of San Diego County, Cynthia Bashant, Judge. Reversed with directions.

F.G. appeals a judgment of the juvenile court terminating her parental rights to her minor daughter N.G. under Welfare and Institutions Code section 366.26.[1] F.G.

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1 Statutory references are to the Welfare and Institutions Code unless otherwise specified.

contends the court and the San Diego County Health and Human Services Agency (Agency) did not comply with the notice provisions of the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.), requiring reversal of the judgment. Agency concedes ICWA notice was insufficient, but asserts F.G. is entitled only to a limited remand. We reverse the judgment and remand the matter to the juvenile court for the sole purpose of requiring compliance with ICWA notice.

FACTUAL AND PROCEDURAL BACKGROUND

In July 2005, three-month-old N.G. became a dependent of the juvenile court under section 300, subdivision (b) and was removed from parental custody based on findings she and F.G. tested positive for methamphetamine when she was born, F.G. had no prenatal care and she had a prior dependency case with an older child. The court placed N.G. with the paternal grandparents.

Although F.G. reported she had no Indian ancestry, N.G.'s father, Michael W., claimed he had Cherokee and Blackfeet heritage. The court mailed ICWA notices to those tribes and to the Bureau of Indian Affairs (BIA). The notices disclosed that all information about the paternal relatives was unknown. The BIA, Blackfeet tribe, Cherokee Nation of Oklahoma and Eastern Band of Cherokee Indians responded that N.G. was not an Indian child within the meaning of ICWA. No response was received from the United Keetoowah Band of Cherokee Indians. At several hearings, the court found proper notice had been given to the tribes, and ICWA did not apply.

F.G. did not reunify with N.G. after six months of services. At a section 366.26 selection and implementation hearing, the court terminated parental rights and referred N.G. for adoptive placement.

DISCUSSION

F.G. contends the ICWA notices sent to the various tribes and the BIA contained insufficient information about N.G.'s family history, and the notice sent to the United Keetoowah Band of Cherokee Indians was sent to the wrong address. The record supports this contention and Agency concedes the error. Accordingly, the judgment terminating parental rights must be reversed for the limited purpose of having Agency comply with the notice requirements of ICWA. If no tribe intervenes after proper notice, the judgment must be reinstated. (*In re Francisco W.* (2006) 139 Cal.App.4th 695, 704, 711.)

In a letter brief, minor's counsel informs us of Agency's concerns about N.G.'s adoptive placement with the paternal grandparents, and argues the juvenile court on remand must make a renewed finding of N.G.'s adoptability to ensure she does not become a legal orphan. F.G. joins in this argument in her reply brief.

Where, as here, the judgment terminating parental rights is supported by substantial evidence and the only error requiring reversal is defective ICWA notice, the juvenile court is not authorized to revisit issues previously adjudicated at a selection and implementation hearing. (*In re Francisco W., supra,* 139 Cal.App.4th 695, 705, 707; *In re Terrance B.* (2006) 144 Cal.App.4th 965, 973.) "The limited reversal disposition in defective notice ICWA appeals is in keeping with the public policy of our child

dependency scheme, which favors prompt resolution of cases." (*Francisco W.*, at p. 706.) Limited reversal is also consistent with "established principles of appellate practice, which focus on the evidence before the trial court and do not consider postjudgment events." (*Ibid.*)

Counsel's unsworn statements about a "looming threat of [N.G.'s] removal" from the paternal grandparents' home, aside from being speculative and unsupported by any evidence, do not affect the juvenile court's finding N.G. is adoptable. The evidence before the juvenile court showed N.G. was both specifically and generally adoptable, and if the paternal grandparents could not adopt her, there were six other approved families willing to adopt a child with her characteristics. Further, counsel's concern about N.G. becoming a legal orphan is addressed in section 366.26, subdivision (i)(2), which "provides the mechanism by which the juvenile court may restore parental rights and select a different permanent plan if the minor has not been adopted after three years." (*In re Terrance B., supra*, 144 Cal.App.4th at p. 973 [fn. omitted].) We decline to depart from our practice of issuing limited reversals in an appeal involving only defective ICWA notice.

DISPOSITION

The judgment terminating parental rights is reversed and the case is remanded to the juvenile court with directions to order Agency to comply with the notice provisions of ICWA. If, after proper notice, a tribe claims N.G. is an Indian child, the juvenile court shall proceed in conformity with all provisions of ICWA. If, alternatively, no tribe

claims N.G. is an Indian child, the judgment terminating parental rights shall be reinstated.

McDONALD, J.

WE CONCUR:

HALLER, Acting P.J.

IRION, J.